

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GARY K. RAVET, an individual,

Plaintiff,

vs.

MARC O. STERN, an individual; JOEL
WOHLFEIL, an individual,

Defendants.

CASE NO. 07CV31 JLS (CAB)

**ORDER: GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION FOR
ATTORNEY'S FEES**

(Doc. No. 189)

Presently before the Court is Defendant's renewed motion for attorneys' fees pursuant to Cal. Civ. Pro. Code § 425.16, commonly known as California's Anti-Strategic Lawsuit Against Public Participation ("anti-SLAPP") statute. (Doc. No. 189.) Also before the Court is Plaintiff Gary Ravet's opposition.¹ (Doc. No. 192.) For the reasons below, the Court **GRANTS IN PART** and **DENIES IN PART** Defendant's motion for attorneys' fees.

BACKGROUND

On January 4, 2007, Ravet filed a federal complaint against various defendants² alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), as well as extortion, conversion, trespass to chattels, spoliation of evidence, defamation, and abuse of

¹ The Court notes that Plaintiff's opposition was untimely filed pursuant to this Court's Order (Doc. No. 182); however, the Court declines to strike the opposition because Defendant did not file a reply and raise this as an issue.

² Defendant Wohlfeil was not named as a defendant in the federal action in the original complaint, but was named in a later complaint.

1 process. (Doc. No. 1.) The complaint was based on a malicious prosecution action filed against
 2 Ravet in San Diego Superior Court, of which Stern and Wohlfeil were counsel for the plaintiffs in
 3 that action. (*Id.*) The defendants all filed motions to dismiss the complaint, which Judge Miller
 4 granted on July 17, 2007. (Doc. No. 56.)

5 Ravet filed an amended complaint on July 31, 2007 (Doc. No. 57), which all defendants
 6 moved to dismiss and strike. (Doc. Nos. 71, 73-76, 123.) On August 1, 2008, before Judge Miller
 7 had ruled on the motions to dismiss, Ravet requested leave to file a second amended complaint.
 8 (Doc. No. 143.) This request was granted, and Ravet filed a second amended complaint on
 9 September 8, 2008. (Doc. Nos. 143, 144.)

10 On October 6, 2008, defendants Stern and Wohlfeil renewed their motions to dismiss,
 11 strike and quash, including their anti-SLAPP motion. (Doc. No. 154.) Shortly thereafter, on
 12 October 31, 2008, Ravet filed a notice of dismissal without prejudice of the action against Stern
 13 and Wohlfeil. (Doc. No. 154.) Stern and Wohlfeil requested the Court retain jurisdiction over
 14 their anti-SLAPP motion, which the Court granted. (Doc. Nos. 158, 160.)

15 On August 31, 2009, the Court granted Stern and Wohlfeil's anti-SLAPP motion to strike
 16 Plaintiff's claims of extortion, defamation, and abuse of process and denied Stern and Wohlfeil's
 17 motion as to the conversion and trespass to chattels claims. (Doc. No. 182.) Pursuant to
 18 California Code of Civil Procedure § 425.16(c), the Court found that the defendants were entitled
 19 to reasonable attorneys' fees associated with their prevailing claims. (*Id.* at 10.) However, the
 20 Court ordered defendants to produce documents evidencing the attorneys' fees and costs before
 21 awarding the specific fees. (*Id.*) On November 6, 2009, Wohlfeil filed a motion for attorneys'
 22 fees and costs, which were allegedly incurred by Stern as Wohlfeil's attorney in the matter. (Doc.
 23 No. 183.) The Court denied without prejudice Defendant's motion for attorneys' fees on the
 24 grounds that Defendant did not meet "his burden of establishing the reasonableness of Stern's rate
 25 charged, nor the reasonableness of Stern's total number of hours and why they are sufficiently
 26 connected to the anti-SLAPP proceeding." (Doc. No. 183.) As such, on April 7, Wohlfeil filed
 27 the present renewed motion for attorneys' fees. (Doc. No. 189.)

28 **LEGAL STANDARD**

"In any action subject to [Cal. Civ. Proc. Code § 425.16(b)], a prevailing defendant on a

1 special motion to strike *shall* be entitled to recover his or her attorney's fees and costs." Cal. Civ.
 2 Proc. Code § 425.16(c) (emphasis added). A district court has "broad discretion in determining the
 3 reasonable amount of attorney fees and costs to award a prevailing defendant." *Kearney v. Foley and*
 4 *Lardner*, 553 F. Supp. 2d 1178 (S.D. Cal. 2008) (quoting *Metabolife Int'l, Inc. v. Wornick*, 213 F.
 5 Supp. 2d 1220, 1222 (S.D. Cal. 2002)).

6 To determine a reasonable attorneys' fee award, the California Supreme Court has found that
 7 "the lodestar adjustment approach should be applied to fee awards under Code of Civil Procedure
 8 section 425.16." *Ketchum v. Moses*, 17 P.3d 735, 744 (Cal. 2001). The Court begins by "multiplying
 9 the number of hours reasonably spent on the litigation by a reasonable hourly rate." *McCown v. City*
 10 *of Fontana*, 565 F.3d 1097, 1102 (9th Cir. 2009) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433
 11 (1983)). The resulting figure is referred to as the "lodestar" amount. *Id.* (citing *City of Riverside v.*
 12 *Rivera*, 477 U.S. 561, 568 (1986)).¹

13 To determine the reasonable hourly rate, the Court looks to the "rate prevailing in the
 14 community for similar work performed by attorneys of comparable skill, experience, and reputation."
 15 *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir. 2008) (quoting *Barjon v. Dalton*, 132
 16 F.3d 496, 502 (9th Cir. 1997)). In this case, the relevant community is the Southern District of
 17 California because it is "the forum in which the district court sits." *Id.* The burden is on the party
 18 requesting attorneys' fees to "produce satisfactory evidence." *Blum v. Stenson*, 465 U.S. 886, 895
 19 n.11 (1984). Evidence that the Court should consider includes "[a]ffidavits of the [movant's] attorney
 20 and other attorneys regarding prevailing fees in the community, and rate determinations in other cases,
 21 particularly those setting a rate for the [movant's] attorney." *United Steelworkers of Am. v. Phelps*
 22 *Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

23 To determine the reasonable hours expended in a case, the Court should exclude hours "that
 24 are excessive, redundant, or otherwise unnecessary." *McCown*, 565 F.3d at 1102 (quoting *Hensley*,
 25 461 U.S. at 434). The party requesting attorneys' fees "should provide documentary evidence to the
 26 court concerning the number of hours spent." *Id.* "[A]bsent circumstances rendering an award unjust,
 27 the fee should ordinarily include compensation for all hours reasonably spent, including those relating

28 ¹ The lodestar formula has also been adopted by California state courts. *See Serano v. Priest*,
 569 P.2d 1303, 1316 (Cal. 1977).

1 solely to [obtaining] the fee [award].” *Kearney*, 553 F. Supp. 2d at 1178 (quotation omitted).

2 DISCUSSION

3 In the instant case, Defendant Wohlfeil requests an award of attorneys’ fees in the total
 4 amount of \$43,185.00. (Memo. ISO Motion at 15.) These fees were allegedly incurred by Stern
 5 from the date he was retained by Wohlfeil on November 15, 2007 up until the present. (Stern
 6 Decl. ¶ 7.) If the Court grants Wohlfeil’s request for attorneys’ fees, Ravet requests the Court to:
 7 1) eliminate fees that would have been expended regardless of whether or not the anti-SLAPP
 8 motion was filed; 2) reduce the remaining balance by 50% to account for the fact that Stern’s
 9 work, aside from the motion to quash, was done for both himself and for Wohlfeil; and 3) reduce
 10 once again the remaining sum by 50% because the anti-SLAPP motion was successful as to only
 11 three of the five causes of action.² (Opp. at 21.)

12 I. Entitlement to Fees Requested

13 Generally, the award of attorneys’ fees pursuant to an anti-SLAPP motion is limited to the
 14 reasonable fees incurred during the course of or in connection with the anti-SLAPP proceeding,
 15 not the entire action. *S.B. Beach Props. v. Berti*, 39 Cal. 4th 374, 381 (2006); *Platypus Wear, Inc.*
 16 *v. Goldberg*, 166 Cal. App. 4th 772 (2008); *see also Metabolife Int’l, Inc. v. Wornick*, 213 F. Supp.
 17 2d 1220, 1221-24 (S.D. Cal. 2002). Accordingly,

18 [a]ll expenses incurred on common issues of fact and law qualify for an award of attorneys’
 19 fees under the anti-SLAPP statute and those fees need not be apportioned. But mere
 20 common issues of fact are insufficient to award all fees when legal theories do not overlap
 21 or are not inextricably intertwined.

22 *Kearney*, 553 F. Supp. 2d at 1184.

23 A. Motion to Dismiss

24 Wohlfeil argues that expenses spent on his motions to dismiss³ Ravet’s RICO claim should

25 ² Other than for these reasons stated above, the Court declines to address and wholly rejects
 26 Ravet’s unsubstantiated arguments as to why Wohlfeil is not entitled to reasonable attorneys’ fees and
 27 costs incurred by Stern.

28 ³ The Court notes that the motion to quash, dismiss, and strike were renewed throughout
 different stages of this case. For purposes of this Order, the analysis is the same for each motion; thus,
 the Court will address each in the singular and applies the analysis to each relevant renewed motion
 and related time entry.

1 be recoverable as attorneys' fees because the motions to dismiss and motions to strike were
 2 "inextricably intertwined and based upon common facts." (Memo. ISO Motion at 7.) Specifically,
 3 Wohlfeil argues that the following common facts governed the motions to strike and motions to
 4 dismiss: "Ravet was impermissibly attempting to prosecute Mr. Wohlfeil for extortion based on
 5 Wohlfeil's exercise of his rights to petition . . . [as] protected under the *Noerr-Pennington*
 6 Doctrine and California law." (*Id.*) As to the common issues of law, Stern argues that the motions
 7 to dismiss and to strike were both "premised upon Wohlfeil's exercise of his rights to petition
 8 under the *Noerr-Pennington* Doctrine and the related California privileges."⁴ (*Id.*)

9 In Wohlfeil and Stern's motion to dismiss Ravet's Second Amended Complaint, Wohlfeil
 10 and Stern argue that Ravet's "cause of action for RICO fails because defendants' conduct in
 11 pursuing RAVET in the Superior Court malicious prosecution action is protected as judicial
 12 petitioning activity under the *Noerr-Pennington* doctrine." (Memo. ISO MTD Second Amended
 13 Complaint ("SAC") at 2.) On similar facts, the Court granted Defendant's motion to strike Ravet's
 14 extortion, defamation, and abuse of process claims in light of Defendant's right to petition and
 15 litigation privilege under California law. (Doc. No. 182.) Accordingly, both the motion to strike
 16 and motion to dismiss share common issues of fact and law.

17 However, the motion to dismiss also presents additional legal grounds in favor of
 18 dismissal: 1) the Complaint does not plead a legally cognizable RICO claim pursuant to Rule
 19 12(b)(6), and 2) the Complaint fails to plead fraud with particularity pursuant to Rule 9. (Memo
 20 ISO MTD SAC at 12–18.) As such, Wohlfeil can recover for attorneys' fees for his motion to
 21 dismiss to the extent that the work performed on the dismissal action was "premised on the *Noerr-*
 22 *Pennington* doctrine and/or litigation privilege but not otherwise. In other words, defendant['s]

24 ⁴ "The *Noerr-Pennington* doctrine derives from the First Amendment's guarantee of 'the right
 25 of the people ... to petition the Government for a redress of grievances.'" *Kearney*, 553 F. Supp. 2d
 26 at 1181 n.3 (quoting U.S. Const. amend. I). "Under the *Noerr-Pennington* doctrine, those who petition
 27 any department of the government for redress are generally immune from statutory liability for their
 28 petitioning conduct." *Id.* (citation omitted). Under the anti-SLAPP statute, "A cause of action against
 a person arising from any act of that person in furtherance of the person's right of petition or free
 speech under the United States or California Constitution in connection with a public issue shall be
 subject to a special motion to strike, unless the court determines that the plaintiff has established that
 there is a probability that the plaintiff will prevail on the claim." Cal. Civ. Code § 425.16(b)(1). As
 such, "the *Noerr-Pennington* doctrine is analogous to California's anti-SLAPP statute." *Kearney*, 553
 F. Supp. 2d at 1181 n.3.

1 arguments concerning separate and distinct defenses concerning RICO . . . raised in the motion to
 2 dismiss, will not be awarded.” *Kearney*, 553 F. Supp. 2d at 1184 (allowing reasonable attorneys’
 3 fees for defendants’ motion to dismiss a RICO claim where the “central focus of defendants’
 4 motions and the Court’s Order was the applicability of the *Noerr-Pennington* doctrine and/or
 5 litigation privilege to plaintiff’s claims”); *see also Coulter v. Murrell*, 2010 WL 2775627 (S.D.
 6 Cal. 2010) (denying fees incurred in bringing a motion to dismiss where “the motion and the anti-
 7 SLAPP motion were not ‘inextricably intertwined’ and did not share any common legal or factual
 8 issues”).

9 **B. Motion to Quash**

10 Pursuant to Cal. Civ. Code § 425.16, Wohlfeil also requests attorneys’ fees for costs
 11 incurred in bringing a motion to quash. (Memo. ISO Motion at 8–9.) In order to support this
 12 request, Wohlfeil relies on *Metabolife Int’l, Inc. v. Wornick* where the court allowed the defendant
 13 to recover attorneys’ fees and costs associated with raising the defenses of lack of personal
 14 jurisdiction and improper venue. *Metabolife Int’l, Inc. v. Wornick*, 213 F. Supp. 2d 1220, 1223
 15 (S.D. Cal. 2002). In its decision to award these fees, the court emphasized that all of these
 16 defenses, including the anti-SLAPP motion, were a part of the motion to dismiss “rather than
 17 wholly separate defenses.” *Id.* Pursuant to Rule 12(h), the court found that the defendant had “to
 18 raise the defenses of lack of personal jurisdiction and improper venue in [the] motion to dismiss
 19 with the anti-SLAPP motion or suffer waiver of those defenses.” *Id.* Moreover, these fees were
 20 reasonable because the *entire* action was subject to the anti-SLAPP motion given the fact that all
 21 causes of action related to free speech and all of the defendant’s activity was inextricably
 22 intertwined with the anti-SLAPP motion. *Id.*

23 The present case is distinguishable. Wohlfeil’s motion to quash service was never raised in
 24 the motion to dismiss. Rather, it was a wholly separate defense. Moreover, unlike the case in
 25 *Metabolife Int’l, Inc.* the entire action in the present case was not subject to the anti-SLAPP
 26 motion. Instead, this court denied Wohlfeil and Stern’s motion to strike the trespass to chattels
 27 and conversion claims. (Doc. No. 182.) Finally, the entire motion to quash is premised on the fact
 28 that Ravet “never applied for an amended summons naming WOHLFEIL” and that Ravet “served

1 WOHLFEIL with the original summons, which [did] not even name WOHLFEIL as a defendant.”
 2 (Doc. No. 123.) As such, the motion to quash does not share common issues of law with the anti-
 3 SLAPP motion. *See Kearney*, 553 F. Supp. 2d at 1184 (“mere common issues of fact are
 4 insufficient to award all fees when legal theories do not overlap or are not inextricably
 5 intertwined”). In light of the above facts, the Court finds that Wohfeil is not entitled to attorneys’
 6 fees under Cal. Civ. Code § 425.16 insofar as the fees pertain to the motion to quash.

7 **C. Motion to Strike**

8 Pursuant to Cal. Civ. Code § 425.16, Wohlfeil is entitled to attorneys’ fees associated with
 9 the anti-SLAPP motion. Wohlfeil argues that the fees award should not be discounted just because
 10 the anti-SLAPP motion was unsuccessful in striking two of Plaintiff’s five causes of action.
 11 (Memo. ISO Motion at 9.) Specifically, Defendant argues that the “arguments and evidence,
 12 which defendant presented in support of his unsuccessful Motion to Strike Ravet’s Trespass to
 13 Chattels and Conversion claims, were precisely the same arguments and evidence which were used
 14 to successfully strike Ravet’s [other claims].” (*Id.*) However, this Court found that Wohlfeil was
 15 “entitled to attorneys’ fees and costs associated with [his] *prevailing* claims.” (Doc. No. 182 at 10
 16 (emphasis added).) In the instant case, Wohlfeil’s anti-SLAPP motion “prevailed” in striking
 17 three of Plaintiff’s five causes of action. (*See id.*) To be sure, a “partially prevailing party is not
 18 necessarily entitled to all incurred fees even where the work on the successful and unsuccessful
 19 claims was overlapping.” *Mann v. Quality Old Time Serv., Inc.*, 42 Cal. Rptr. 3d 607, 617-18 (Cal.
 20 App. 2006) (citing *Hensley*, 461 U.S. at 440 (1983)). Thus, Wohlfeil is not entitled to attorneys’
 21 fees incurred as to the two non-prevailing causes of action. *See id.* at 618-19 (reducing the
 22 attorney fee award by 50% where the defendant’s anti-SLAPP motion was successful as to one of
 23 the four causes of action and finding that the “fees awarded to a defendant who was only partially
 24 successful on an anti-SLAPP motion should be commensurate with the extent to which the motion
 25 changed the nature and character of the lawsuit in a practical way”).

26 **II. Reasonable Hourly Rate**

27 Wohlfeil’s attorney, Stern, establishes that the hourly rate he charged was \$350. (Stern
 28 Decl. ¶ 2.) In support of this hourly rate, Wohlfeil has filed Stern’s Declaration which discusses

1 his qualifications. Specifically, Stern has practiced in California since 1981, has experience in
 2 handling complex civil litigation, and has ten years of litigation experience with Ravet involving
 3 four separate lawsuits. (Stern Decl. ¶¶ 2–4.) In his declaration, Stern also argues that the present
 4 proceeding was complex and involved multiple motions and an appeal. (*Id.* ¶ 6.) Finally,
 5 Wohlfeil provides the declaration of Attorney Grebing which states that the “customary hourly
 6 rates of attorneys performing this type of work range between \$285 and \$375 per hour.” (Memo.
 7 ISO Motion Exh. 9 (“Grebing Decl.” ¶ 8).) Based on these documents, the complex and lengthy
 8 nature of this case, and the Court’s familiarity of the rates charged in the San Diego community,
 9 the Court finds that the \$350 hourly rate is reasonable. *See Fleming v. Coverstone*, 2009 WL
 10 764940, at *7 (S.D. Cal. 2009) (finding that \$425 for the shareholder, \$245 for the senior
 11 associate, and \$220 for the junior associate were reasonable hourly rates for anti-SLAPP attorneys’
 12 fees based on the Court’s “knowledge of prevailing standards in the community and absent any
 13 objection to the attorneys’ per hour fees”); *Cornwell v. Belton*, 2008 WL 80724 (S.D. Cal. 2008)
 14 (granting attorneys’ fees pursuant to Cal. Civ. Proc. Code § 425.16 in a case where attorneys
 15 charged hourly rates of \$400 for the lead counsel and partner in the firm, \$350 for appellate and
 16 law and motion counsel, and \$250 for associates in an anti-SLAPP proceeding).

17 **III. Reasonable Hours Expended**

18 **A. Failed Motion for Attorneys’ Fees**

19 In addition to fees incurred for the present motion, Wohlfeil also requests costs incurred in
 20 bringing the prior failed motion for attorneys’ fees. (Memo. ISO Motion Exh. 10.) In *Ketchum v.*
 21 *Moses*, the California Supreme Court found that “an award of fees may include not only the fees
 22 incurred with respect to the underlying claim, but also the fees incurred in enforcing the right to
 23 mandatory fees under [Cal. Civ. Proc. Code §] 425.16.” *Ketchum*, 17 P.3d at 747. Thus, it is
 24 reasonable for the fee award to include hours billed on 4/1/10 and 4/6/10 as these pertain to the
 25 present motion for a total of \$3,080.00. (Memo. ISO Motion Exh. 10.) However, the Court will
 26 not recognize Wohlfeil’s arguments and request for costs incurred in bringing the rejected motion
 27 for attorneys’ fees which are billed in the 10/9/09–3/30/10 entries. (*Id.*) The Court denied the
 28 prior motion without prejudice because Wohlfeil failed to meet “his burden of establishing the

1 reasonableness of Stern's rate charged" or "the reasonableness of Stern's total number of hours
 2 and why they are sufficiently connected to the anti-Slapp proceedings." (Doc. No. 188.) The fee
 3 award should include only *reasonable* hours, *Kearny*, 553 F. Supp. 2d at 1178, and the Court
 4 finds hours spent on a wholly insufficient request for attorneys' fees is unreasonable. As such, the
 5 Court will not reward Wohlfeil for his unsubstantiated motion, and the reasonable hours used to
 6 calculate the fee award are reduced to a total of **\$3,080.00**.

7 **B. Vague Billing Entries**

8 Ravet argues that the Court should strike the fee request in its entirety given the reasoning
 9 in *Christian Research Inst. v. Alnor*, 81 Cal. Rptr. 3d 866, 874 (Cal. Ct. App. 2008). (Memo. ISO
 10 Opp. at 21.) Although the Court finds that *Christian Research Inst.* does not support striking
 11 Wohlfeil's request in its entirety, the Court finds that the case is instructive as to the issue of
 12 Stern's vague billing entries.⁵ In *Christian Research Inst. v. Alnor*, the court affirmed a reduction
 13 in an anti-SLAPP fee award given, among other factors, vague billing entries. *Id.* at 874. The
 14 court characterized the following entries as vague: those that made "made no reference at all to the
 15 motion to strike or otherwise designated the hours expended as anti-SLAPP work" and those that
 16 described work as "further handling." *Id.* Moreover, the court found that "[b]lockbilling . . .
 17 exacerbated the vagueness of counsel's fee request, [which was] a risky choice since the burden of
 18 proving entitlement to fees rests on the moving party." *Id.* Thus, the court concluded that a
 19 reduction in fees was proper.

20 In the instant case, the billing entries on the following dates submitted by Stern are vague:
 21 11/15/07–11/26/07; 11/30/07; 12/3/07; 12/6/07–9/30/08; 10/7/08–11/26/08; 12/18/08; and
 22 4/22/09–7/1/09. (Memo. ISO Motion Exh. 10.) None of these entries specify which motions were
 23 being revised, the nature of the various correspondences, or which court order was in review. In
 24 short, these entries make no reference at all to the anti-SLAPP motion to strike. Moreover, many
 25

26
 27 ⁵ Ravet cites *Christian Research Inst. v. Alnor* for the proposition that Wohlfeil's attorneys'
 28 fee request should be stricken in its entirety. However, the court in *Christian Research Inst.* only
 affirmed a reduction of fees from over \$250,000 to \$21,300. *Christian Research Inst.*, 81 Cal. Rptr.
 3d at 869. Thus, this case does not support Ravet's proposition that Wohlfeil is entitled to no fees
 whatsoever.

1 of these vague billings, like those for receipt and review of court orders, are costs that would have
 2 been incurred in the course of Stern's representation of Wohlfeil irrespective of the anti-SLAPP
 3 motion. *See Christian Research Inst.*, 81 Cal. Rptr. 3d at 874 (finding that the defendant was not
 4 entitled to an award that included defendant's attempt to "transfer to the opposing parties the cost
 5 of every minute counsel expended on the case" or for "billings for obtaining the docket at the
 6 inception of the case, obtaining unspecified but 'numerous court documents,' and attending the
 7 trial court's mandatory case management conference-all of which would have been incurred
 8 whether or not [d]efendant filed the motion to strike"). Thus, these costs will not be included in
 9 the fee award.

10 In support of his billing for teleconferences and correspondences, Stern states, "I believe
 11 all of the discussions I have billed for were in pursuit of driving this case to a resolution, which
 12 included my client's compensation for his attorney's fees, at the earliest possible juncture." (Stern
 13 Decl. ¶ 15.) Stern elaborates, "In my opinion, all of those conversations were caused by Mr.
 14 Ravet's false accusations, which were nothing more than an attempt to restrict Mr. Wohlfeil's
 15 rights to practice law, protected under *Noerr-Pennington* and California law." (*Id.*) Given that the
 16 "fee applicant bears the burden of establishing entitlement to an award," Stern's "belief" as to the
 17 propriety of awarding these fees is insufficient to warrant an award for these billings. *Hensley*,
 18 461 U.S. at 437 (1983); *see also Kearney*, 553 F. Supp. 2d at 1185 ("The Court must have
 19 'substantial evidence' to support the fee award" (citation omitted)). In the instant case, the Court
 20 cannot reasonably ascertain whether these conversations were pertinent or irrelevant to the anti-
 21 SLAPP motion. Similarly, Stern's statement that from October 6, 2008 to October 31, 2008 "all of
 22 [his] efforts on behalf of Mr. Wohlfeil . . . were directly related to attempts to finally resolve this
 23 case, at the earliest possible juncture . . ." is insufficient to support a fee award as to those vague
 24 billing entries. (Stern Decl. ¶ 14(i).)

25 For the above reasons, these vague billing entries do not allow the Court to determine
 26 "how much time . . . [was] spent on particular claims, and whether the hours were reasonably
 27 expended." *Christian Research Inst.*, 81 Cal. Rptr. 3d at 870. In light of the fact that the "party
 28 petitioning for attorneys' fees necessarily bears the burden of persuasion on the elements of that

1 claim,” the Court finds that Wohlfeil has not met this burden of persuasion as to the vague entries.
 2 *Kearney*, 553 F. Supp. 3d at 1185. As such, a reduction in fees is proper, and all such vague
 3 entries will not be included in the fee award.

4 **C. Block Billed Entries**

5 Generally, block billing can “obscure[] the nature of some of the work claimed” and
 6 “exacerbate[] the vagueness of counsel’s fee request.” *Christian Research Inst.*, 81 Cal. Rptr. 3d
 7 at 874. Because “block billing makes it more difficult to determine how much time was spent on
 8 particular activities,” the Ninth Circuit has held that it will not “quarrel with the district court’s
 9 authority to reduce hours that are billed in block format.” *Welch v. Metropolitan Life Ins. Co.*,
 10 480 F.3d 942, 948 (9th Cir. 2007) (citing *Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 971
 11 (D.C. Cir. 2004) (reducing requested hours because counsel’s practice of block billing “lump[ed]
 12 together multiple tasks, making it impossible to evaluate their reasonableness”); *Hensley*, 461 U.S.
 13 at 437 (holding that applicant should “maintain billing time records in a manner that will enable a
 14 reviewing court to identify distinct claims”); and *Fischer v. SJB-P.D. Inc.*, 214 F.3d 1115, 1121
 15 (9th Cir. 2000) (holding that a district court may reduce hours to offset “poorly documented”
 16 billing)). However, the Ninth Circuit has also found that an across-the-board reduction on hours
 17 should not be applied to *all* requested hours and should instead be specific to counsel’s block
 18 billed hours. *Id.* Finally, the district court should “explain how or why . . . the reduction . . .
 19 fairly balance[s] those hours that were actually billed in block format.” *Welch*, 480 F.3d at 948
 20 (citing *Sorenson v. Mink*, 239 F.3d 1140, 1146 (9th Cir. 2001)).

21 In the instant case, the billing entries on the following dates are block billed: 11/29/07;
 22 12/4/07; 10/1/08–10/6/08; 4/13/09–4/20/09. (Memo. ISO Motion Exh. 10.) These entries include
 23 both fees that are unrelated to the anti-SLAPP motion and those incurred during the course of or in
 24 connection with the anti-SLAPP proceeding. Specifically, these entries include work for three
 25 different motions: the motion to quash, motion to dismiss, and motion to strike. (*Id.*) Because
 26 Wohlfeil does not separate the fees between these three motions, the Court equally apportions the
 27 hours billed in these entries into thirds after having reviewed Wohlfeil’s exhibits.

28 On 11/29/07, Stern billed \$2,275 for 6.5 hours of the following work: “Draft Motions to

1 Quash, Strike and Dismiss Ravet's Amended Complaint, Tele-conference with Client; draft
 2 Declarations; draft Notice of Lodgment in Support of Motions.” (Memo. ISO Motion Exh. 10.)
 3 Because Wohlfeil is not entitled to attorneys' fees under Cal. Civ. Code § 425.16 insofar as the
 4 fees pertain to the motion to quash, the 6.5 hours are reduced by 1/3.⁶ As to the motion to strike,
 5 Wohlfeil is certainly entitled to attorneys' fees. Given the fact that Wohlfeil partially prevailed as
 6 to three of Ravet's five causes of action, Wohlfeil may recover 3/5 of the 1/3 of work pertaining to
 7 the motion to strike in this block billed entry. Finally, Wohlfeil can recover for attorneys' fees for
 8 his motion to dismiss to the extent that the work performed on the dismissal action was premised
 9 on the *Noerr-Pennington* doctrine and/or litigation privilege. As such, the 1/3 portion of this work
 10 in the block billed entry is reduced by 1/2. Taking into account all of these reductions, the 6.5
 11 hours are reduced to 2 (23/60) hours, rounded to 2.38 hours.⁷ At a reasonable hourly rate of \$350,
 12 this amounts to **\$833.00** in attorneys' fees for the billing entry on 11/29/07.

13 On 12/4/07, Stern similarly block billed 1.9 hour of work for all three motions: the motion
 14 to quash, strike, and dismiss. (Memo. ISO Motion Exh. 10.) Applying the same reductions as
 15 above, the 1.9 hours are reduced by 1/3 to account for work on the motion to quash. The 1/3 of
 16 work on the motion to strike is reduced by 2/5, and the 1/3 of work on the motion to dismiss is
 17 reduced by 1/2. Accordingly, the 1.9 hour is reduced to 0.70 of an hour. This amounts to **\$245.00**
 18 in recoverable attorneys' fees.

19 Again, from 10/1/08–10/6/08 and 4/13/09–4/20/09 Stern block billed hours of work for all
 20 three motions. (Memo. ISO Motion Exh. 10.) Applying the same reductions as above, the hours
 21 billed on 10/1/08 are reduced from 10 hours to 3.67 hours. At \$350 an hour, this amounts to
 22 **\$1,284.50** in recoverable attorneys' fees. The hours billed on 10/2/08 are reduced to 3.19 hours
 23 resulting in **\$1,116.50**. Similarly, the hours on 10/3/08 and 10/6/08 are reduced to 1.83 and 1.47
 24 hours respectively. This results in **\$640.50** and **\$514.50** for these block billed entries.

25
 26 _____
 27 ⁶ Given that Wohlfeil cannot recover for attorneys' fees for work on the motion to quash, the
 28 Court notes that Wohlfeil is also not entitled to fees incurred on 11/28/07. The Court takes this
 reduction into account in its final fee award calculation.

⁷ Given the complex fractions at hand and the nature of the numbers, the Court rounds the
 hours to the nearest hundredth.

1 The hours billed from 4/13/09–4/20/09 are reduced to the following hours: 1.58; 0.55; and
 2 0.73. As such, Wohlfeil can recover attorneys' fees for **\$553.00**, **\$192.50**, and **\$255.50** for these
 3 billings.

4 **D. Fees Related to the Anti-SLAPP Proceeding**

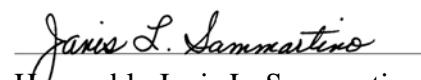
5 Because the award of attorneys' fees pursuant to an anti-SLAPP motion includes the
 6 reasonable fees incurred during the course of or in connection with the anti-SLAPP proceeding,
 7 the following billing entries are included in the present fee award: 12/2/08–12/12/08; 12/16/08;
 8 12/17/08; 2/25/09; 3/4/09; 4/9/09; 7/27/09; 9/2/09. (Memo. ISO Motion Exh. 10.) Several of
 9 these entries pertain to costs incurred as a result of Ravet's appeal of this Court's order to retain
 10 jurisdiction over the Anti-SLAPP motion. (Doc. Nos. 157 & 163.) These hours are reasonable
 11 and included in the fee award. *See Christian Research Inst.*, 81 Cal. Rptr. 3d at 870 (“Appellate
 12 challenges concerning the motion to strike are also subject to an award of fees and costs, which are
 13 determined by the trial court after the appeal is resolved” (citation omitted)); *Dove Audio, Inc. v.*
 14 *Rosenfeld, Meyer & Susman*, 54 Cal. Rptr. 2d 830 (“A statute authorizing an attorney fee award at
 15 the trial court level includes appellate attorney fees unless the statute specifically provides
 16 otherwise” (citation omitted)). The other billings pertain to costs incurred as a result of Ravet's
 17 ex-parte motion to have the hearing of the anti-SLAPP motion taken off calendar. (Doc. No. 165.)
 18 Because this relates to costs incurred “in connection with” the anti-SLAPP proceeding, these
 19 reasonable hours are also included in the fee award for a total of **\$5,360.00**.

20 **CONCLUSION**

21 In light of the above factors and reductions, this Court **GRANTS** Defendant's motion for
 22 attorneys' fees in the amount of **\$14,075**.

23 **IT IS SO ORDERED.**

24 **DATED:** August 6, 2010

25
 26 
 27 Honorable Janis L. Sammartino
 28 United States District Judge